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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 615

JOHN MANSAVAGE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 222-232) is reported at 178 F. 2d 812.

JURISDICTION

The judgment of the Court of Appeals was entered on December 27, 1949 (R. 232-233). Upon timely application therefor, petitioner's time for filing a petition for a writ of certiorari was extended by order of Mr. Justice Minton to February

20, 1950 (R. 238), and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether petitioner was denied procedural due process by failure of the local selective service board (1) to reduce to writing and include in his file oral evidence offered by petitioner at the time of his personal appearances before it, or (2) to grant him full and fair hearings.

2. Whether the trial court properly withheld from the jury the question whether petitioner was accorded full and fair hearings.

3. Whether the evidence shows that petitioner failed to perform a duty imposed upon him, i. e., to submit to induction, as charged in the indictment.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the statute and regulations involved are set forth in the Appendix, *infra,* pp. 24-27.

STATEMENT

An indictment filed on January 21, 1948, in the District Court for the Northern District of Illinois charged that on or about June 27, 1946, at Chicago, Illinois, petitioner knowingly and wilfully neglected and failed to submit to induction, as required

by the Selective Training and Service Act of 1940 (R. 2-3).

On February 16, 1942, petitioner registered under the Act with Local Board No. 1, Stevens Point, Wisconsin (Gov. Ex. 1 and 1-A, R. 129, 160-161; R. 66-67). On May 21, 1942, he filed his selective service questionnaire in which he stated, *inter alia*, that he was single and that his education consisted of eight years of elementary schooling; that he was employed as a farm laborer by Anton Mansavage, his father (Gov. Ex. 1-B, R. 162; R. 12), at an average wage of $40 a month; that he had worked in that job for ten years; that he had no other business, work or profession; that his job was to prepare the soil, plant, care for and harvest crops and take care of cattle and horses; that he was not a student preparing for the ministry in a divinity school and that although he had not been formally ordained, he was and had been a minister of Jehovah's Witnesses since August 1936; that because of his religious training, he was a conscientious objector to war; and that in his opinion his classification should be 4-D (minister) (Gov. Ex. 1-B, R. 162-167; R. 13-14, 67). Petitioner also filed the special selective service form for conscientious objectors in which he claimed exemption as such (4-E) and stated that he had derived his religious training and beliefs from study of the Bible and the publications of the Watchtower Bible & Tract Society since 1930; that the only school he attended was a public

school; that he had been a member of Jehovah's Witnesses since 1936 and engaged in house to house witness work of Jehovah; that the church he customarily attended was Odd Fellows Hall, Stevens Point, and individual homes, of which he, Frank Laszewski and David Mansavage were the pastors; and that the basis of his opposition to war was found in the Bible (Gov. Ex. 1-C, R. 168-173; R. 14, 67). On July 24, 1942, the local board classified petitioner 1-A-0 (conscientious objector available for noncombatant military service) (Gov. Ex. 1-B, R. 167; Df. Ex. 12X, R. 195; R. 15, 67-68).

Upon petitioner's request in an affidavit dated July 30, 1942, that he be given a hearing to consider a change of his classification to 4-D on the ground that he was an ordained minister of Jehovah's Witnesses and was actively engaged in preaching the gospel (Df. Ex. 9 and 13, R. 193, 197; R. 29, 68), he appeared before the local board on August 11, 1942, and was referred to a member of the board (R. 24-25, 68-69). A memorandum of the same date, signed by the board member and placed in petitioner's file, summarized only petitioner's statements made at that time about his family, his part-time work in a lumber yard, and the kind of a farm his father operated, and concluded that his request to be classified 4-D was denied, but that the board had voted that he be classified 4-E (conscientious objector to both combatant and noncombatant military service) (Df. Ex. 1, R. 184; R. 24). Petitioner

appealed from this classification on August 20, 1942 (Df. Ex. 5, R. 187-188; R. 15, 27, 167), and his file was forwarded to the board of appeal (Df. Ex. 10, R. 29, 194). That board referred the case to the Department of Justice, whose hearing officer conducted a hearing on November 30, 1942, at which petitioner and his brother were present. The report of the hearing officer shows that petitioner explained his house to house work as a Jehovah's Witness and his conscientious opposition to war as described in his questionnaire and special form for conscientious objectors, and that the hearing officer found that petitioner was sincere in claiming conscientious objection to participation in war. The report also quoted an F. B. I. investigative report which showed that petitioner and his family were Jehovah's Witnesses, that petitioner was actively engaged in house to house witness work and had attended annual conventions of Jehovah's Witnesses, and that he commenced this activity in 1940, "performing a total of 126 hours of such work from October 1940, to September, 1941, and 196 hours from September, 1941 to date [November 4, 1942]." (Gov. Ex. 1-D, R. 174-178; Df. Ex. 6, R. 189; R. 15-16, 28.) On February 19, 1943, the board of appeal continued petitioner's 4-E classification (R. 16, 167-168).

On February 23, 1943, the local board received and placed in petitioner's file a letter signed, "Several disgusted citizens of Plover," which con-

tained inflammatory and antagonistic remarks about petitioner's classification as a conscientious objector (Df. Ex. 8, R. 192; R. 28-29).

At the local board's request, petitioner on March 11, 1943, prepared and filed an agricultural questionnaire in which he explained his work on the farm and added that, aside from his work as a farmer, he also drove a truck (Gov. Ex. 1, R. 134-136; R. 25).

On March 31, 1943, the local board again heard petitioner upon his request for a reclassification to 4-D (R. 17-18, 25, 73-74). A memorandum of that date signed by a board member appears in petitioner's file and contains a summary of the hearing to the effect that petitioner was informed that he could not be classified 4-D under the board's interpretation of the selective service rules, that the board could do nothing further except consider him for an agricultural deferment, and that as matters then stood he would either have to work full time as a farmer or be sent to Milwaukee for final examination. The memorandum also stated that petitioner expressed dissatisfaction with the board's action and his intention, with the board's approval, to confer with Selective Service officials in Madison, Wisconsin. (Df. Ex. 2, R. 185.) Petitioner did so (R. 77) and thereafter, on April 7, 1943, formally withdrew his "claim as a conscientious objector" and requested "that no further consideration be given by Selective Service Boards to

any statements made by me and on record pertaining to conscientious objection." (Gov. Ex. 1-E, R. 178; R. 17, 79.)

On April 8, 1943, petitioner again appeared before the local board. A memorandum of that date appears in petitioner's file and recites that petitioner appeared and stated that he intended to devote his entire time to farming and that, accordingly, he was classified II-C (agricultural deferment) with the definite understanding he would be a full time farmer. (Gov. Ex. 1, R. 137; R. 17, 79.) Petitioner was continued in this classification until the spring of 1946 (R. 17, 79, 97-98, 168).

On March 19, 1946, about two weeks after petitioner had filed a periodic supplement to his agricultural questionnaire in which he indicated that he was still devoting his full time to farming (Gov. Ex. 1, R. 149-150), a county agent reported to the local board that he had found petitioner working in a lumber yard and that petitioner advised him that the "work on the farm [was] done up" (Gov. Ex. 1, R. 150-151). On April 3, 1946, the board reclassified petitioner 4-E (Df. Ex. 7-A and 15, R. 190, 198; R. 17, 79).

Upon petitioner's request (Df. Ex. 12, R. 196; R. 30, 79), the local board gave him a hearing on April 17, 1946 (R. 18, 79). A memorandum of the hearing, signed by a member of the board, recites that petitioner requested a 4-D classification and was not interested in any other and stated that he

did chores at the farm in the morning and worked the rest of the day at a lumber company. After reviewing the file, the board reclassified him 1-A. (Gov. Ex. 1-F, R. 179.) Petitioner appealed and addressed a letter to the board of appeal stating that the Watchtower Bible and Tract Society recognized him as an ordained minister, and that he was then devoting 39½ hours a month to preaching and from 60 to 100 hours a month to study (Df. Ex. 3, R. 186; R. 26, 99). On June 6, 1946, the board of appeal also classified him 1-A (R. 191).

On June 14, 1946, the local board ordered petitioner to report for induction on June 27, 1946 (Df. Ex. 18, R. 203; R. 19-20, 99). He appeared as ordered with the hope that he would be classified 4-F (physically unfit) and was transferred to the induction station at Chicago, Illinois. There he took his physical examination, was found physically fit and acceptable for military service, received a ticket for his army clothes, and then, instead of proceeding to the room where the induction ceremony was performed, he left the induction center and thereafter failed to reappear for induction. (Gov. Ex. 1, 1-H and 1-I, R. 151-155, 180-183; R. 32-41, 100-101.)

In defense, petitioner's counsel sought to examine him concerning his discussions with the local board at his various hearings. On objection by government counsel to the materiality of such testimony, the court ruled that evidence supplementing

the selective service record should be directed to the court and not be brought to the attention of the jury. Petitioner's counsel conceded the correctness of this ruling, provided the proffered testimony was not disputed by the Government, but he insisted that otherwise the testimony should go to the jury. The court sustained the Government's objection, but permitted petitioner's counsel to proceed with this line of examination outside the presence of the jury (R. 68-71, 73). Petitioner then testified that at the hearing on August 11, 1942, after he had been classified 1-A-0, he explained to the member of the local board that he preached the gospel from house to house and that his ordination was derived from the scriptures; that the member interrupted him in his presentation of scriptural authority to support his claim that he was a minister of the gospel and stated that "it has been decided in Washington that none of Jehovah's Witnesses were ministers, and the Local Board wasn't going to regard [him] as a minister either"; and that he was also advised that if he "was willing to set aside [his] ministry and put [his] full time into farming that they would give [him] a 2-C classification" (R. 71-72).

In respect of the hearing on March 31, 1943, after his classification in 4-E by the board of appeal, petitioner testified that he repeated his explanation of his ordination and preaching activities to three other members of the local board, including the

chairman; that the chairman told him that his status as a minister had been decided by the board of appeal and that the local board could not "go over the heads" of that board; that he insisted to the board that his activities came within the definition of a "regular minister" set forth in an opinion issued by General Hershey which was read at the hearing; and that he offered "to bring in records from the Kingdom Hall and other witnesses and ministers to testify in my behalf." He said the board "refused to let me do this" and that the chairman "told me once, if he told me a dozen times, that it has been decided in Washington that Jehovah's Witnesses were not ministers and I was not going to get 4-D classification, and they wouldn't give me the class of 4-D either. He told me if they gave me a 4-D classification they would have to give all the rest of Jehovah's Witnesses a 4-D classification. He said there wasn't any of Jehovah's Witnesses got a 4-D classification, and I wasn't going to get one either." (R. 74-76.)

Petitioner said that he withdrew his claim for a 4-E classification on April 7, 1943, solely upon the advice of the Department of Justice hearing officer that the local board could not classify him 4-D as long as he claimed to be a conscientious objector (R. 77-79, 94).

Petitioner testified that at the hearing on April 17, 1946, which resulted in his classification in 1-A, he again explained his "ministry" and told the

local board that he performed baptisms, conducted funeral sermons, preached the gospel from house to house, and, with others in the congregation, gave "Bible talks" at gatherings to which the public were invited. He also told the board that since 1943 he had received two years of vocational school instruction, that during the preceding four years he had attended a "school in theocratic ministry" in Stevens Point where, at weekly sessions, he received instruction in the preparation and delivery of Bible talks, that he had also been an instructor in a similar school, and that he devoted 60 to 100 hours a month "in preaching the different sermons and also in making preparations for the conduct of this school." He testified that his offer to produce records and affidavits in support of his claim to ministerial status was refused by the board because it had "been decided in Washington that Jehovah's Witnesses aren't ministers" and because the board of appeal "had already acted on my case." The board again offered him a 2-C classification if he would devote his full-time to farming. (R. 80-85.)

On cross-examination on this phase of his testimony outside the presence of the jury, petitioner admitted that he never submitted to the board any affidavits or other written statements concerning his asserted activities as a minister and as a student and instructor in the ministry school and that he never appealed his 2-C classification (R. 86-93).

Petitioner offered in evidence the deposition of

W. T. Doar, chairman of the board of appeal at the time of petitioner's classification in 1-A in June 1946, in an attempt to show that the appeal board acted in an arbitrary and capricious manner, that there was no basis in fact for its determination, and that it considered the letter in petitioner's file which the local board had received from "Several disgusted citizens of Plover" (*supra*, pp. 5-6). The court rejected the offer because the question it raised was not one for the jury, but excerpts from the deposition were read into the record. (R. 48-50.) In these excerpts Mr. Doar stated that he had no independent recollection of acting on petitioner's 1946 appeal, but that the board normally reviewed the registrant's complete file together with the applicable selective service regulations and acted upon the whole record, that upon the basis of the information in petitioner's file, the board "might have concluded that a man who was not formally ordained was not a minister of religion" (R. 57), and that, normally, the board never gave any consideration to letters such as the one written by the Plover citizens. (R. 50-63.) [1]

At the close of the evidence the trial judge stated (R. 103): "I have read the record of the Registration Board, together with the record of the Appeal Board in connection with this matter, and I

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[1] So far as appears from the record, petitioner laid no foundation for the use of this deposition at the trial by showing compliance with Rule 15, F. R. Crim. P., either in taking it or in establishing that Mr. Doar was unavailable as a witness.

am satisfied there is a substantial basis in fact to support the classification." The court also denied petitioner's motion for a judgment of acquittal (R. 108-109) and refused his request for the following instructions (R. 113, 205):

> If you find and believe or have a reasonable doubt thereof that the defendant gave orally to the board new and further information about his ministerial status upon the occasion of any one of his hearings which was considered by the board and failed to reduce such new and further oral information to writing you shall acquit the defendant and by your verdict find him "not guilty" of the offense charged in the indictment.
>
> You are further instructed that the local board had made memorandums following the various hearings before the board which do not contain any summary of the evidence the defendant says he gave about his ministerial status. If you believe that this is sufficient proof to you that no additional evidence was considered although given or that the local board denied the registrant the right to give new and further information about his ministry and further you find and believe or have a reasonable doubt that such failure to consider or receive evidence offered by the defendant was because the board was no longer considering whether or not he was exempt, then you are charged that there was a denial of procedural due process of law by the board and you should acquit the defendant and by your verdict say "not guilty". [R. 205.]

The court instructed the jury in part as follows:

> After such registration by an individual it becomes the duty of each Local Draft Board, set up under the Act, to classify each individual in one of a number of different classifications, and under the provisions of the Act and the regulations promulgated by the President under the authority of the Act, any individual entitled to do so may appeal from any classification given him by his Local Draft Board.
>
> After a registrant takes such an appeal, he does so appeal, and the appeal has been denied, his classification becomes final, and under the law he is required to obey any lawful order issued by his Selective Service Board thereafter in accordance with his classification. The jury cannot review the actions of the Selective Service Boards or the Appeal Boards. (R. 121.)
>
> * * * * *
>
> You are also advised that the Selective Training & Service Act of 1940 and the rules and regulations promulgated thereunder provide that certain persons may be classified as ministers of religion and may be put by the Selective Service Board in what is known as Class 4-D; the question whether or not a registrant is entitled to be classed as a minister of the Gospel, or whether the defendant since that date is in fact a minister of the Gospel is not for you to determine (R. 122-123).

The jury found petitioner guilty (R. 208) and he was sentenced to imprisonment for one year and

a day (R. 208). Upon appeal, the Court of Appeals affirmed the judgment of conviction (R. 232-233).

ARGUMENT

1. Petitioner contends that the local board denied him procedural due process (a) by failing, in violation of Regulations 623.2, 625.2(b), and 627.13(a) (*infra,* pp. 24-26), to reduce to writing and thus make available to the board of appeal the oral information he gave it at his hearings, and (b) in failing to give him full and fair hearings on his appearances before it (Pet. 3, 17, 27-39).

(a) In respect of the first aspect of this contention (Pet. 27-32), the court below held, citing *Niznik* v. *United States,* 173 F. 2d 328 (C.A. 6), and *Peterson* v. *United States,* 173 F. 2d 111 (C.A. 6), certiorari denied in both cases, 337 U. S. 925, that "The summaries prepared by the local board * * * satisfied the requirements of the Selective Service Regulations" and that "all such facts as had any substantial bearing on defendant's status can be found in or ascertained from the documents in his Selective Service file" (R. 228). The record supports this holding.

After each hearing the local board placed in petitioner's file a summary of his statements, as required by section 625.2(b) of the Regulations. It is true that these summaries do not contain the information he gave the board about his religious work, beliefs and study, but this information was

already in petitioner's file. His own testimony indicates that at the August 11, 1942, hearing, he did not present any information pertinent to his claim for a 4-D classification which was not already contained in his Selective Service questionnaire, in the special form for conscientious objectors filed on May 21, 1942, and in his affidavit of July 30, 1942, outlining his work as a Jehovah's Witness. The same is true in respect of his oral statements to the board on March 31, 1943. By that time there was also in petitioner's file the Department of Justice hearing officer's report, dated November 30, 1942, which contained a comprehensive description of petitioner's beliefs, his religious training, his work as a Jehovah's Witness, and the number of hours he devoted to this work.

In respect of the April 17, 1946, hearing, petitioner's own testimony indicates that he repeated most of what he had said in 1943 concerning his beliefs and his work as a witness. In addition, he advised the board that he had received further training since 1943 in preparing and delivering Bible talks. This latter information was not contained in the summary of this hearing prepared by the board, but in his letter to the board of appeal accompanying his appeal petitioner gave a summary of the time he devoted to his religious work (*supra,* p. 8). His statements to the local board concerning his attendance at the ministry school, where he learned "ways and means to preach the

Gospel to the people in a better manner" (R. 81), added nothing to the information already in his file.

(b) Petitioner's contention that the local board denied him full and fair hearings on the grounds (1) that the board did not, as required by section 625.2(c) of the Regulations, consider his classification *de novo* after each hearing (Pet. 33-35), and (2) that the board was prejudiced against Jehovah's Witnesses (Pet. 35-39), was rejected by the court below as having "no factual basis whatsoever. Any reasonable person, considering the entire Selective Service file of this defendant, must be impressed, as we were with the consideration and care with which the local board and the boards of appeal treated him. To claim, on this record, that the members of the local board or of the boards of appeal were prejudiced against Jehovah's Witnesses is simply to assert an untruth." (R. 229.)

(1) The record shows (see *supra,* pp. 4, 6, 7, 8) that after each of petitioner's appearances, the local board voted anew on his classification, as required by section 625.2(c). Petitioner's testimony relative to the local board's statements to him at the hearings on March 31, 1943, and April 17, 1946, that it could not give him a 4-D classification because the board of appeal had already passed on the question, does not indicate, as he contends, that the local board disregarded the regulation. At

best, it indicates that the local board did not consider that the allegedly new information submitted by petitioner on those occasions would justify it in giving him a classification denied by the board of appeal in February 1943 when it classified him 4-E. Furthermore, the local board's actions in classifying him 2-C in April 1943, after he had abandoned his claim as a conscientious objector and had stated that he intended to devote his full time to farming, and in changing his classification to 1-A in April 1946, after it found that he was no longer engaged in farming and was working in a lumber yard, plainly indicate careful reconsideration of his case with each new development in his occupation and activities.

(2) To support his contention of prejudice on the part of the local board against Jehovah's Witnesses, petitioner relies on his own testimony that the board told him at his hearings that it had "been decided in Washington that Jehovah's Witnesses were not ministers" and that "there wasn't any of Jehovah's Witnesses got a 4-D classification, and I wasn't going to get one either" (R. 76). Upon the basis of this testimony he now makes the wholly unwarranted assertion that the local board members "said that Jehovah's witnesses were not entitled to any rights under the law" (Pet. 37). Clearly, no such distorted interpretation can be properly placed on petitioner's testimony. Neither does it lend any support to his contention that the

local board was prejudiced against Jehovah's Witnesses. At most, it indicates that the board may have misconstrued Opinion No. 14 issued by the Director of Selective Service (see *infra,* pp. 27-29), which clearly specified that a general determination with respect to the classification of Jehovah's Witnesses could not be made. However, we believe that a reasonable interpretation of the board's statements is that the board felt that petitioner, like many Jehovah's Witnesses, did not have the standing in that organization similar to that occupied by regular or duly ordained ministers of other religions, which it was necessary for him to show in order to qualify for the 4-D classification.

Finally, the asserted failure of the local board to consider petitioner's classification *de novo* after each hearing and petitioner's imputation of prejudice to the board are irrelevant, as petitioner himself seems to concede (see Pet. 45), for he was finally classified by the board of appeal (see Reg. 627.26(a), *infra,* p. 26) and there is no showing that its determination was similarly affected. See *United States* v. *Balogh,* 157 F. 2d 939, 942-943 (C.A. 2), reversed, 329 U. S. 692; *Bowles* v. *United States,* 319 U. S. 33; *Falbo* v. *United States,* 320 U. S. 549, 555 (concurring opinion).[2]

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[2] Petitioner attempts to avoid this fatal defect in this contention by his argument (Pet. 44-47) that the trial court erred in excluding the so-called deposition of Mr. Doar, the chairman of the board of appeal at the time it ultimately classified petitioner 1-A. Far from tending to establish arbitrariness or capriciousness in this action of the board of

2. Petitioner argues (Pet. 47-49) that the trial court should have submitted to the jury the question whether the local board was prejudiced and whether it had failed to consider new evidence offered upon his personal appearances, and he asserts that the decision of the court below upholding the trial court's action in not permitting the jury to consider the testimony which he had offered to show that he was denied fair hearings, is contrary to *United States* v. *Zieber,* 161 F. 2d 90 (C.A. 3), certiorari denied, 333 U. S. 827; *Smith* v. *United States,* 157 F. 2d 176 (C.A. 4), certiorari denied, 329 U. S. 776; and *Niznik* v. *United States, supra.* In the *Niznik* case, the Sixth Circuit said (173 F. 2d at 336):

> * * * when a board's action is the result of prejudice, and its classification based on discrimination, its conduct is lawless and beyond its jurisdiction. Estep v. United States, 327 U. S. 114, 121, 66 S. Ct. 423, 90 L. Ed. 567. A draft board loses jurisdiction when it proceeds arbitrarily and without due regard to the rights to which a registrant is entitled under the regulations. Smith v. United

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appeal, Mr. Doar's statements, summarized at p. 12, *supra,* show that petitioner's case received fair and objective treatment. And, even if, as petitioner argues, the trial judge gave no consideration to Mr. Doar's statements in determining that the classification had a substantial basis in fact, any error in this regard was cured by the Court of Appeals' consideration of the proffered evidence and its holding that there was "absolutely no showing that [Mr. Doar] would, if permitted to testify, give evidence tending to show that the Board acted in an arbitrary or capricious manner" (R. 231).

> States, supra. As was said in United States v. Zieber, 3 Cir., 161 F. 2d 90, 93, "The court below did not present the important questions of fact, hereinbefore outlined, to the jury for its determination or instruct the jury that the action of the Local Board contrary to the Act or regulations 'would be lawless and beyond its jurisdiction.' "

Here again, however, petitioner's contention ignores the fact that his final classification was decided by the board of appeal. Hence, the asserted error on the part of the trial court is irrelevant. See *United States* v. *Balogh, supra.*

In any event, petitioner's proffered testimony raised no real issue of fact which he was entitled to have submitted to the jury. As we have shown above (*supra,* pp. 18-19), the alleged statements of members of the local board upon which he relies as showing prejudice do not even remotely support his assertion. Likewise, petitioner's testimony relating to the alleged additional information he gave the local board at his various hearings did not raise any issues which should have been submitted to the jury as in the *Smith* and *Zieber* cases *supra,* since, as we have also shown (*supra,* pp. 15-17), there was no doubt that this information was not new or additional. Hence, the court below was correct in sustaining the trial judge's action, even though it may have misconstrued, as petitioner claims (Pet. 24-25), the decision of this Court in *Cox* v. *United States,* 332 U. S. 442, as holding that

the validity of a selective service classification could not be assailed in a criminal prosecution by testimony tending to show prejudice on the part of the local board, so long as the classification given had a substantial basis in fact (R. 231-232). We do not understand petitioner to contend that his classification was not supported by the evidence before the boards.

3. Finally, petitioner's contention (Pet. 40-44) that he was not guilty of refusing to submit to induction because there was no proof that he was directly ordered to submit, but only that he was ordered to report for induction, is frivolous and is refuted, as the court below pointed out (R. 231), by the holding in *Billings* v. *Truesdell*, 321 U. S. 542, 557, that "He who reports to the induction station but refuses to be inducted violates § 11 of the Act as clearly as one who refuses to report at all. * * * The order of the local board to report for induction includes a command to submit to induction." Section 633.21(b) of the Selective Service Regulations, *infra*, pp. 26-27, provided that "Upon reporting for induction, it shall be the duty of the registrant * * * (5) to submit to induction," and it is clear that petitioner violated that duty, as the indictment charged.

CONCLUSION

The petition for a writ of certiorari does not, in our opinion, present any question meriting further review by this Court. We therefore respectfully submit that it should be denied.

PHILIP B. PERLMAN,
Solicitor General.
JAMES M. MCINERNEY,
Assistant Attorney General.
ROBERT S. ERDAHL,
FELICIA H. DUBROVSKY,
Attorneys.

MARCH 1950.

APPENDIX

Section 11 of the Selective Training and Service Act of 1940, 54 Stat. 885, 57 Stat. 596, 50 U.S.C. App. (1946 ed.), 301, *et seq.*, provided in part:

> Sec. 11. Any person * * * who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act * * * shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, * * *.

The Selective Service Regulations (32 C.F.R. Cum. Supp., ch. VI) involved in this case provided as follows:

> § 623.2 *Information considered for classification.* The registrant's classification shall be made solely on the basis of the Selective Service Questionnaire (Form 40), Affidavit of Dependent Over 18 Years of Age (Form 40A), Affidavit—Occupational Classification (General) (Form 42), or Affidavit—Occupational Classification (Industrial) (Form 42A), and such other written information as may be contained in his file. Oral information should not be considered unless it is summarized in writing and the summary placed in the registrant's file. Under no circumstances should the local board rely upon information received by a member personally unless such informa-

tion is reduced to writing and placed in the registrant's file.

* * * * *

§ 625.2 *Appearance before local board.* * * *

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. * * *.

(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified: * * *.

* * * * *

§ 627.13 *Local board to transmit record to the State Director of Selective Service.* (a) Immediately upon an appeal being taken to the board of appeal, the local board shall carefully check the registrant's file to make certain

that all steps required by the regulations have been taken and the record is complete. If any facts considered by the local board do not appear in the written information in the file, the local board shall prepare and place in the file a written summary of such facts. In preparing such a summary the local board should be careful to avoid the expression of any opinion concerning information in the registrant's file and should refrain from including any argument in support of its decision.

* * * * *

§ 627.26 *Decision of board of appeal.*

(a) The board of appeal shall classify the registrant, giving consideration to each class in the order in which the local board gives consideration thereto when it classifies a registrant.

* * * * *

§ 633.21(b) (32 C.F.R. 1944 Supp.) *Duty of registrant to report for and submit to induction.* * * *

(b) Upon reporting for induction, it shall be the duty of the registrant: (1) to follow the instructions of a member or clerk of a local board as to the manner in which he shall be transported to the location where his induction will be accomplished, (2) to obey the instructions of the leader or assistant leaders appointed for the group being forwarded for induction, (3) to appear at the place where

his induction will be accomplished, (4) to obey the orders of the representatives of the armed forces while at the place where his induction will be accomplished, (5) to submit to induction, and (6) if he is not accepted by the armed forces, to follow the instructions of the representatives of the armed forces as to the manner in which he will be transported on his return trip to the local board.

Opinion No. 14 (amended), issued by the Director of Selective Service November 2, 1942, provided in pertinent part as follows (R. 199-203):

> Jehovah's Witnesses claim exemption from training and service and classification in Class IV-D as duly ordained ministers of religion under section 5(d), Selective Training and Service Act of 1940, as amended, and section 622.44, Selective Service Regulations, Second Edition, * * *
>
> 1. The Watchtower Bible and Tract Society, Inc., is incorporated under the laws of the State of New York for charitable, religious, and scientific purposes. The unincorporated body of persons known as Jehovah's Witnesses hold in common certain religious tenets and beliefs and recognize as their terrestrial governing organization the Watchtower Bible and Tract Society, Inc. By their adherence to the organization of this religious corporation, the unincorporated body of Jehovah's Witnesses are considered to constitute a recognized religious sect.

2. The unusual character of organization of Jehovah's Witnesses renders comparisons with recognized churches and religious organizations difficult. Certain members of Jehovah's Witnesses, by reason of the time [which] they devote, the dedication of their lives which they have made, the attitude of other Jehovah's Witnesses, toward them, and the record kept of them [and] their work, are in a position where they may be recognized as having a standing in relationship to the organization and the other members of Jehovah's Witnesses similar to that occupied by regular or duly ordained ministers of other religions.

* * * * *

5. The members of Jehovah's Witnesses, known by the various names of the members of the Bethel Family, Pioneers, Regional servants, Zone servants, Company servants, Sound servants, Advertising servants, and Back-call servants, devote their time and efforts in varying degrees to the dissemination of the tenets and beliefs of Jehovah's Witnesses. The [deference] paid to these individuals by other members of Jehovah's Witnesses also varies in a great degree. It is impossible to make a general determination with respect to these persons as to their relationship to Jehovah's Witnesses. Whether or not they stand in the same relationship as regular or duly ordained ministers in other religions must be determined in each individual case by the local board, based upon whether or not they devote

their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded.

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